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Recognition of administrative proceedings of a prior year; Statements on responsibilities in tax practice 04

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Recognition of Administrative Proceeding of a Prior Year

I. Introduction

This statement considers whether a certified public accountant may sign the preparer's declaration on a Federal tax return in which the treatment of an item differs from that consented to by the taxpayer for a similar item as a result of an administrative proceeding concerning a prior year's return. This statement refers to an administrative proceeding which was concluded by the execution of a waiver by the taxpayer.

An "administrative proceeding" includes an examination by a revenue agent, a district conference or an appellate conference relating to a return or a claim for refund.

The term "waiver" includes a waiver of restrictions on the assessment of a deficiency in tax, the acceptance of the Internal Revenue Service's findings by a partnership, fiduciary or Subchapter S corporation, and the acceptance of an overassessment.

Any reference to "item" or "year" is intended to cover the plural of those terms.

II. Statement

The selection of the treatment of an item in the course of the preparation of a tax return should be based upon the facts and the rules as they are evaluated at the time the return is prepared. Unless the taxpayer is bound as to treatment in the later year,

*Issued by the Committee on Federal Taxation of the
American Institute of Certified Public Accountants*

such as by a closing agreement, the disposition of an item as a part of concluding an administrative proceeding by the execution of a waiver for a prior year does not govern the taxpayer in selecting the treatment of a similar item in a later year's return. Therefore, if justified by the facts and rules then applicable, a CPA may sign the preparer's declaration on a return containing a departure from the treatment of an item arrived at as a part of concluding an administrative proceeding regarding a prior year's return. Such departure need not be disclosed.

III. Explanation

A taxpayer as a matter of course usually will treat an item in the same manner as was arrived at in concluding an administrative proceeding for a prior year when a similar item arises in a subsequent year. The question is whether the taxpayer is required to do so. The considerations in deriving an answer include:

1. The Internal Revenue Service tends to act consistently with the manner in which a similar item was disposed of in a prior administrative proceeding, but maintains that it must look upon the examination of each return as a new matter. Broadly speaking, it has no alternative to this policy because of its responsibility as an administrative agency.
2. The taxpayer's position may be influenced by facts or circumstances such as the following:
 - (a) his assent in the administrative proceeding may have been caused by a lack of substantiation while supporting data for the later year is adequate,
 - (b) he may have yielded in the administrative proceeding for settlement purposes even though there was and is reasonable support for his position, or
 - (c) taking into account the applicable court decisions, rulings, etc., the climate now may be more favorable to the taxpayer's position than it was when the administrative proceeding was concluded.

When valid reasons exist such as those cited above, there is no requirement that a disclosure of the dissimilarity be made in a later year's return.

NOTE

This statement has been approved by at least two-thirds of the members of the committee on Federal taxation, reached on a formal vote after examination of the subject matter. It has not been considered and acted upon by the Council of the Institute. Its authority rests upon the statutes and regulations of the taxing authority and the general acceptability of the committee's interpretations. The statement is not intended to be retroactive. Its applicability is the same as that stated in Part IV of Statements 1 and 2.

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